

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA

Case No. 5:11-cr-00037-1

v.

MEMORANDUM OPINION

JAMES LOUIS WHITTLESEY,
Petitioner.

By: Hon. Michael F. Urbanski
United States District Judge

James Louis Whittlesey, a federal inmate proceeding pro se, filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 in light of Johnson v. United States, ___ U.S. ___, 135 S. Ct. 2551 (2015). Court records indicate that the court already dismissed a prior § 2255 motion at ECF Nos. 40, 54, and 55. Thus, the § 2255 motion is a second or subsequent motion under 28 U.S.C. § 2255(h). See, e.g., United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014).

The court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that a claim in the motion meets certain criteria. See 28 U.S.C. § 2255(h). As Petitioner has not submitted any evidence of having yet obtained certification from the Court of Appeals to file a second or successive § 2255 motion, the court dismisses the § 2255 motion without prejudice as successive. Based upon the court's finding that Petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c) and Slack v. McDaniel, 529 U.S. 473, 484 (2000), a certificate of appealability is denied.¹

ENTER: This 15th day of July, 2016.

(s) Michael F. Urbanski

United States District Judge

¹ Petitioner is hereby advised of the procedure for obtaining certification to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge-panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244(b). A Fourth Circuit form and instructions for filing this motion are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 1100 E. Main St., Suite 501, Richmond, VA 23219.

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JULIA C. DUDLEY, CLERK
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